



COUNTY OF LOS ANGELES
CLAIMS BOARD

500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

June 7, 2004

Maria M. Oms
Auditor-Controller
John F. Krattli
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Paul and Naiyi Cheng v. County of Los Angeles**
Torrance Superior Court Case No. YC 045 024

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$150,000.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Department of Public Works - Sewer Maintenance.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Department of Public Works.

Return the executed, adopted copy to Georgene Salisbury, Suite 648
Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/gs

Enclosures

MEMORANDUM

May 24, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: HENRY NELSON
Nelson and Fulton

ROGER H. GRANBO
Principal Deputy County Counsel
General Litigation Division

RE: Paul and Naiyi Cheng v. County of Los Angeles
Torrance Superior Court Case No. YC 045024

DATE OF
INCIDENT: March 19, 2002

AUTHORITY
REQUESTED: \$150,000

COUNTY
DEPARTMENT: Department of Public Works - Sewer Maintenance

CLAIMS BOARD ACTION:

☐ Approve

☐ Disapprove

☐ Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY A. ARMFIELD

_____, County Counsel
JOHN F. KRATTLI

_____, Auditor-Controller
MARIA M. OMS

on _____, 2004

SUMMARY

This is a recommendation to settle for \$150,000, a lawsuit for dangerous condition of public property and inverse condemnation, filed by Paul and Naiyi Cheng, whose home was damaged by sewage that flowed into their home from a sewer line maintained by the County.

LEGAL PRINCIPLES

A public entity is liable for injuries caused by a dangerous condition of its property if the property was in a dangerous condition at the time of the injury, the injury was caused by the dangerous condition, the dangerous condition created a foreseeable risk of the type of injury that was suffered, and the public entity had actual or constructive notice of the dangerous condition.

A public entity is liable under the law of inverse condemnation for damage caused to property, when the damage was caused by a public improvement as deliberately designed, and construed by the public entity, whether or not the damage was foreseeable. Inverse condemnation liability can be based on an improper maintenance plan of the public entity. A prevailing plaintiff in an inverse condemnation action is entitled to an award of reasonable attorney fees.

SUMMARY OF FACTS

On March 19, 2002, a County maintained sewer line in Palos Verdes Estates backed up into the lateral sewer line of Paul and Naiyi Cheng. Raw sewage flooded into their bathroom, and spread throughout the first floor of the home. The sewer line had become clogged by tree roots in the neighborhood, which caused the sewage to travel into Mr. and Mrs. Cheng's lateral sewer line. The lateral sewer line was equipped with a backflow device, but it did not operate properly to prevent the sewage from backing up into their home.

The flooding caused extensive damage to the floors and walls in the home, and to personal belongings. The home was uninhabitable for five and a half months.

The County had a preventative maintenance program in place in the neighborhood that consisted of regular visual inspections of the sewer line. The sewer line had been inspected on December 4, 2001, and no stoppages in the sewer line were seen. Since the incident, the mainline sewer was placed on a 60-day rodder program to minimize the occurrence of future blockages.

DAMAGES

Should this matter proceed to trial, we estimate the potential damages could be as follows:

Property damage repair	\$ 120,000
Personal property damage	\$ 11,000
Diminution in property value	\$ 200,000
Lost wages	\$ 23,000
Attorney fees and costs	<u>\$ 100,000</u>
Total	<u>\$ 454,000</u>

The proposed settlement calls for the County to pay Paul and Naiyi Cheng \$150,000 for all of their claims for damages, costs, and attorney fees.

STATUS OF CASE

The trial court proceedings have been suspended pending consideration of the proposed settlement.

Expenses incurred by the County in defense of this action are attorney fees of \$17,952 and \$1,279 in costs.

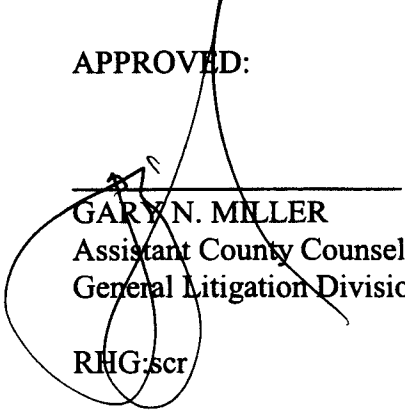
EVALUATION

This is a case of disputed liability. The dangerous condition allegation does not pose a threat of liability, as the County did not have actual or constructive notice of the tree roots in the sewer line. However, a jury could find that the County's sewer maintenance plan was defective because the visual inspections were not sufficient to detect or prevent tree roots in the sewer line. If the jury finds the plan was defective, the County would be liable under the inverse condemnation cause of action.

A reasonable settlement at this time will avoid further litigation costs, and a jury verdict, along with attorney fees, that could exceed the proposed settlement.

We join with our private counsel, Nelson and Fulton, and our third party administrator, Carl Warren and Company, in recommending a settlement of this matter in the amount of \$150,000. The Department of Public Works concurs in the recommendation.

APPROVED:



GARY N. MILLER
Assistant County Counsel
General Litigation Division

RHG:scr

DEPARTMENT OF PUBLIC WORKS

CORRECTIVE ACTION PLAN

Facility: Mainline Sewer within Via Pavion
Case Name: Paul Gung Cheng and Nayi Cheng vs. County of Los Angeles
Case No.: YC045024

RISK MANAGEMENT ISSUES:

	ISSUES
<input checked="" type="checkbox"/> Systems <input type="checkbox"/> Personnel	<p>On March 19, 2002, sewage from the County maintained sewer line within Via Pavion in the City of Palos Verdes Estates backed up and caused flooding in the residence at 4308 Via Pavion. The flooding occurred as a result of a blockage in the main line sewer. A Waterworks and Sewer Maintenance Division crew responded to the incident and rodded the line to clear the blockage and restore flow.</p> <p>The City of Palos Verdes Estates is part of the Consolidated Sewer Maintenance District and the maintenance of the sewer system is the responsibility of the Department of Public Works.</p>

INVESTIGATIVE SUMMARY:

DATE	INVESTIGATION
March 19, 2002	The Department received a service request regarding a plumbing problem at 4308 Via Pavion. A Public Works sewer maintenance crew was dispatched. The crew inspected the sewer line and observed the wastewater level in the manhole to be high. The crew hydroed the line and broke down a root stoppage, thus returning mainline sewer flow to normal. The crew observed flooding damage in the residence at 4308 Via Pavion.
April 19, 2002	The plaintiffs filed a claim for damages with the County of Los Angeles Board of Supervisors.

CORRECTIVE ACTION PLAN**CASE NAME: Paul Gung Cheng and Nayi Cheng vs. COUNTY OF LOS ANGELES****Page 2****CHRONOLOGY OF EVENTS**

DATE	EVENT
December 4, 2001	Sewers in the area were inspected as part of the Districts Preventative Maintenance program. At the time of inspection, sewer flow was normal.
March 19, 2002	Waterworks & Sewer Maintenance Division responded to a service request, regarding a plumbing problem at plaintiff's home. The crew observed the wastewater level high in the manhole, and hydroed the mainline to break down a root stoppage and restore flow.
April 19, 2002	Paul Cheng filed a claim for damages with the County of Los Angeles Board of Supervisors.
September 16, 2003 to present	A Summons and Complaint was filed. Discovery, depositions, settlement negotiations have been ongoing between the Chengs and the County.

CORRECTIVE ACTIONS (PERSONNEL)

None - All Department personnel performed their duties as outlined in the sewer maintenance procedures

CORRECTIVE ACTIONS (SYSTEM)

SYSTEM	CORRECTIVE ACTION	DATE
Mainline sewer within Via Pavion.	This section of mainline sewer was placed on a 60 day rodder periodic program, to minimize the occurrence of future blockages, since the blockage was attributed to roots in the mainline sewer.	May 18, 2004 was the last scheduled rodding.

KL:jh

P0:corrective